

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN D. SPENCER,

Plaintiff,

v.

DAVID J. STORK, *et. al.*,

Defendants.

Case No. 11-10485

Honorable John Corbett O'Meara

ORDER OF DISMISSAL

Plaintiff John D. Spencer filed a breach of employment contract action against Defendants in February 2011. This court granted Defendants' motion to dismiss or for summary judgment March 27, 2012; and Plaintiff appealed. The United States Court of Appeals for the Sixth Circuit determined that this court may have lacked federal subject matter jurisdiction in this matter. It vacated the judgment for Defendants and remanded the case with instructions to consider whether diversity of citizenship exists.

Plaintiff Spencer, while he was incarcerated in Ohio, filed suit against his former employers, all of whom are Michigan citizens. Defendants did not challenge diversity jurisdiction in their dispositive motion. The appellate court pointed to its prior holding that there is a rebuttable presumption that a prisoner retains his former domicile after incarceration. See Stifel v. Hopkins, 477 F.2d 1116, 1124 (6th Cir. 1973). Plaintiff, therefore, is a Michigan citizen, not an Ohio citizen. Because all of the defendants are also Michigan citizens, there is no diversity of citizenship; and this

court lacks federal subject matter jurisdiction.

ORDER

It is hereby **ORDERED** that this case is **DISMISSED**.

s/John Corbett O'Meara
United States District Judge

Date: April 10, 2013

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, April 10, 2013, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager